

**40-8-9.1 Civil penalty for violation of chapter -- Informal conference -- Public hearing -- Contest of violation or amount of penalty -- Collection -- Criminal penalties -- Civil penalty for failure to correct violation -- Civil penalties.**

- (1)
  - (a)
    - (i) A permittee who violates a permit condition or other provision of this chapter, may be assessed a civil penalty by the division.
    - (ii) If the violation leads to the issuance of a cessation order under Section 40-8-9(3), the civil penalty shall be assessed.
  - (b)
    - (i) The penalty may not exceed \$5,000 for each violation.
    - (ii) Each day of a continuing violation may be considered to be a separate violation for purposes of the penalty assessments.
  - (c) In determining the amount of the penalty, consideration shall be given to:
    - (i) the permittee's history of previous violations at the particular mining operation;
    - (ii) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;
    - (iii) whether the permittee was negligent; and
    - (iv) the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation.
- (2)
  - (a) Within 30 days after the issuance of a notice or order charging that a violation of this chapter has occurred, the division shall inform the permittee of the proposed assessment.
  - (b) The person charged with the penalty shall then have 30 days to pay the proposed assessment in full, or request an informal conference with the division.
  - (c) The informal conference held by the division may address either the amount of the proposed assessment or the fact of the violation, or both.
  - (d) If the permittee who requested the informal conference and participated in the proceedings is not in agreement with the results of the informal conference, the permittee may, within 30 days of receipt of the decision made by the division in the informal conference, request a hearing before the board.
  - (e)
    - (i) Prior to any review of the proposed assessment or the fact of a violation by the board, and within 30 days of receipt of the decision made by the division in the informal conference, the permittee shall forward to the division the amount of the proposed assessment for placement in an escrow account.
    - (ii) If the permittee fails to forward the amount of the penalty to the division within 30 days of receipt of the results of the informal conference, the operator waives any opportunity for further review of the fact of the violation or to contest the amount of the civil penalty assessed for the violation.
    - (iii) If, through administrative or judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the division shall, within 30 days, remit the appropriate amount to the operator with interest accumulated.
- (3)
  - (a) A civil penalty assessed by the division shall be final only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing.

- (b) If a public hearing is held, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.
- (c) When appropriate, the board shall consolidate the hearings with other proceedings under Section 40-8-9.
- (d) A hearing under this section shall be of record and shall be conducted pursuant to board rules governing the proceedings.
- (e) If the person charged with a violation does not attend the public hearing, a civil penalty shall be assessed by the division after the division:
  - (i) has determined:
    - (A) that a violation did occur; and
    - (B) the amount of the penalty which is warranted; and
  - (ii) has issued an order requiring that the penalty be paid.
- (4) Civil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state.
- (5) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with an order issued under Section 40-8-9, or any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision under Subsection (3), shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.
- (6) Whenever a corporate permittee violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection (3), a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under Subsections (1) and (5).
- (7) Any person who knowingly makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or an order or decision issued by the board under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.
- (8)
  - (a) An operator who fails to correct a violation for which a notice or cessation order has been issued under Subsection 40-8-9(3)(b) within the period permitted for a correction of the violation shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.
  - (b) The period permitted for correction of a violation for which a notice of cessation order has been issued under Subsection 40-8-9(3)(b) may not end until:
    - (i) the entry of a final order by the board, in a review proceeding initiated by the operator, in which the board orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements; or
    - (ii) the entry of an order of the court, a review proceeding initiated by the operator, in which the court orders the suspension of the abatement requirements of the citation.
- (9) Money received by the state from civil penalties collected from actions resulting from this chapter shall be deposited into the division's Abandoned Mine Reclamation Fund as established under Section 40-10-25.1 and shall be used for the reclamation of mined land impacts not covered by reclamation bonds.

Enacted by Chapter 194, 2002 General Session